DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-216205 **DATE:** February 22, 1985

MATTER OF: Alan Wood - Real Estate Expenses - Title Requirements

DIGEST:

A transferred employee who was divorced from his wife after reporting for duty at his new duty station but prior to the sale of his residence at his old duty station may be reimbursed for only one-half of the real estate expenses incurred since his wife, with whom he held title to the residence, was not a member of his immediate family at the time of settlement.

This decision results from the request of G. J. Pellon, an authorized certifying officer with the Internal Revenue Service (IRS), for our opinion concerning the entitlement of Mr. Alan Wood to reimbursement for expenses incurred incident to the sale of his residence at his former duty station. The IRS reimbursed Mr. Wood for only one-half of the expenses he claimed because on the date of settlement he was divorced from his wife, with whom he held title to the residence, and, therefore, was deemed to have had only a one-half interest in the residence. We hereby affirm the determination of the IRS.

Mr. Wood was transferred from his position with the IRS in Florence, South Carolina, to one in Tampa, Florida, effective March 16, 1981. In May 1983, Mr. Wood separated from his wife, and on September 30, 1983, they were divorced. Their former residence was sold, with the closing taking place on October 17, 1983. (Mr. Wood had requested and was granted two 1-year extensions of the time limit for reimbursement of real estate expenses.)

One of the prerequisites for reimbursement of real estate expenses, found in 5 U.S.C. § 5724a(a)(4) (1984) and its implementing regulation, paragraph 2-6.1c of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), is that title to the residence must be in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. We have consistently held that where the employee holds title to a residence with an individual who

is not a member of his immediate family, the employee may be reimbursed only to the extent of his interest in that residence. See Thomas G. Neiderman, B-195929, May 27, 1980; James A. Woods, B-184478, May 13, 1976; B-167962, November 7, 1969.

The IRS determined that since his former wife was not a member of his immediate family on the date of settlement, Mr. Wood could be reimbursed only to the extent of his interest in the residence. Mr. Wood contends that he should receive full reimbursement because on the date he reported for duty his former wife was a member of his immediate family.

Although there is no statutory definition of immediate family, FTR para. 2-1.4d defines immediate family to include:

> "(1) Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel:
>
> "(a) Spouse;"

This definition would seem to support Mr. Wood's contentions. However, it must be examined in connection with the other provisions concerning reimbursement of real estate expenses. Both 5 U.S.C. § 5724a(a)(4) and FTR para. 2-6.1 provide that an employee must have been required to pay any real estate expenses for which reimbursement is sought. Our decisions, cited above, which provide that reimbursement should be limited to the extent of an employee's interest when he holds title with an individual who is not a member of his immediate family are based on the presumption that in such situations, the liability for expenses is shared.

Since the expenses of a real estate transaction are generally paid at settlement we hold that that date is the appropriate date to use to determine how the employee holds title to the residence. In this case, because Mr. Wood was divorced from his wife before the date of settlement he did not hold title with a member of his immediate family when the property was actually sold. We find no evidence in the record which would rebut the

presumption that liability for expenses was to be shared. In fact, that appears to have been the specific intention of the parties, since the IRS has informed us that the divorce agreement provided that the proceeds of the sale of the residence were to be split between Mr. and Mrs. Wood.

We note Mr. Wood's argument that he could have delayed the divorce until after the settlement and thus qualified for full reimbursement. We have held, however, that since a separated spouse is not a member of an employee's household, such a spouse does not fall within the definition of immediate family. See William A. Cromer, B-205869, June 8, 1982, and cases cited therein.

In previous cases we have held, as we do in this case, that employees who are divorced at the time of settlement, may be reimbursed only to the extent of their interest in the residence as determined at that time. Charles R. Holland, B-205891, July 19, 1982; Gerald S. Beasley, B-196208, February 28, 1980. Those cases differed from the present one in that the employees were separated from their spouses at the time they reported for duty at their new duty stations. However, for the reasons explained earlier we do not believe the present case can be distinguished from those cases on that basis.

We hereby affirm the determination of the IRS to reimburse Mr. Wood for his claimed expenses in direct proportion to the extent of his interest in the residence at the time of settlement.

Shelton J. Dorolan

Acting Comptroller General
of the United States